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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

<p><i>In re:</i></p> <p>PG&E CORPORATION</p> <p>-and-</p> <p>PACIFIC GAS AND ELECTRIC COMPANY</p> <p style="text-align: center;">Debtors.</p> <p><input type="checkbox"/> Affects PG&E Corporation</p> <p><input type="checkbox"/> Affects Pacific Gas & Electric</p> <p><input checked="" type="checkbox"/> Affects Both Debtors</p> <p>All papers shall be filed in the Lead Case, No. 19-30088 (DM)</p>	<p>) Case No.: 19-30088 (DM)</p> <p>) Chapter 11</p> <p>) (Lead Case)</p> <p>) (Jointly Administered)</p> <p>)</p> <p>) MOTION PURSUANT TO FEDERAL RULE</p> <p>) OF BANKRUPTCY PROCEDURE 9006(b)(1)</p> <p>) TO DEEM THE CLAIM OF MARY</p> <p>) McALVAIN TIMELY FILED</p> <p>)</p> <p>) Date: August 23, 2022</p> <p>) Time: 10:00 a.m.</p> <p>) Dept.: To Be Held Telephonically</p> <p>) United States Bankruptcy Court</p> <p>) Courtroom 17</p> <p>) 450 Golden Gate Avenue, 16th Floor</p> <p>) San Francisco, CA</p> <p>) Judge: Honorable Dennis Montali</p> <p>) Objection Deadline: August 16, 2022</p> <p>)</p>
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Pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (FRBP), Claimant MARY MCALVAIN (MCALVAIN) moves for an order expanding time to file Proof of Claim, and allow Claim Number 108641 that was filed on June 30, 2022 with Prime Clerk

1 and submitted with this motion as “Exhibit A”, to be considered timely filed (the “Motion”).
2 This motion is based upon the points and authorities set forth herein and the concurrently filed
3 Notice of Motion and Declaration of MCALVAIN, in addition to any evidence or oral argument
4 presented at the time of hearing on this matter.

5 **I. SUMMARY OF ARGUMENT**

6 1. MCALVAIN suffered emotional distress while evacuating from the Camp Fire
7 as more fully detailed in her supporting declaration. As a direct result of the emotional trauma
8 of losing her home of twenty-five years (25) and everything in her home, fearing for her own
9 life and the lives of family and friends who were also forced to evacuate, MCALVAIN
10 developed post-traumatic stress disorder (PTSD). As a result of her PTSD, MCALVAIN
11 struggled with managing her affairs and navigating the time consuming and overwhelming tasks
12 associated with filing claims to replace everything that she lost as a result of the Camp Fire and
13 relocating to another state, including filing a timely Proof of Claim.

14 2. A Proof of Claim may be deemed timely upon a showing of excusable neglect
15 and lack of prejudice. In this case, due to MCALVAIN’s suffering from PTSD, she was unable
16 to timely file her Proof of Claim. Because there is no danger of prejudice to Debtors PG&E
17 CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY (Debtors), as Debtors’
18 estates are solvent, and all creditors in these cases stand to be paid, this Motion should be
19 granted to allow MCALVAIN to have her claim deemed timely.

20 **II. BANKRUPTCY BACKGROUND**

21 3. On January 29, 2019, Debtors commenced the above-captioned voluntary
22 Chapter 11 cases (“Chapter 11 Cases”). Debtors’ Chapter 11 filings were necessitated by a
23 confluence of factors resulting from catastrophic fires that occurred in Northern California prior
24 to the Petition Date, and Debtors’ potential liabilities arising therefrom.

25 4. The deadline for filing Proofs of Claim with respect to any prepetition claim
26 including, but not limited, to, all claims of Fire Claimants, Wildfire Subrogation Claimants,
27 Governmental Units and Customers, and all secured and priority claims against the Debtors was
28 October 21, 2019, at 5:00 p.m. (“General Bar Date”).

1 5. The deadline for filing claims was extended to December 31, 2019 (“Extended
2 Bar Date”) solely for the benefit of any non-governmental Fire Claimants who did not file
3 Proofs of Claim by the General Bar Date. *See* Dkt No. 4672.

4 6. On January 31, 2020, Debtors filed an Amended Chapter 11 Plan Debtors’ and
5 Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated January 31, 2020. Dkt
6 No. 5590.

7 7. On February 7, 2020, Debtors filed a Disclosure Statement for the Amended
8 Plan. Dkt No. 5700.

9 8. On February 19, 2020, Debtors filed their Motion for Entry of an Order
10 (I) Approving Form of Manner of Notice of Hearing on Proposed Disclosure Statement;
11 (II) Establishing and Approving Plan Solicitation and Voting Procedures; (III) Approving
12 Forms of Ballots, Solicitation Packages, and Related Notices; and (IV) Granting Relief
13 (“Solicitation Procedures Motion”). Dkt No. 5835.

14 9. On March 17, 2020, the Solicitations Procedures Motion was Approved.

15 10. After filing multiple iterations of the Plan, on June 19, 2020, Debtors filed an
16 Amended Joint Chapter 11 Plan of Reorganization dated June 19, 2020 (the “Final Plan”). Dkt
17 No. 8048.

18 11. On June 20, 2020, post-voting and hotly contested confirmation hearings, the
19 Bankruptcy Court entered an order confirming the Final Plan. Dkt No. 8053.

20 **III. MCALVAIN’S CLAIMS ARISING FROM THE CAMP FIRE**

21 12. MCALVAIN is a survivor of the Camp Fire which occurred on November 8,
22 2018, causing the total loss of her home and all of her personal belongings. MCALVAIN Decl.
23 ¶ 16. At the time of the fire, MCALVAIN had resided in her home located at 1531 Judy Lane,
24 Paradise, California for approximately twenty-five (25) years. *Id.* at ¶ 2.

25 13. As a direct and proximate result of the Camp Fire, MCALVAIN was forced to
26 evacuate and was displaced, having to rely on friends for clothing and shelter. *Id.* at ¶ 14-16.

27 14. The loss of her accustomed lifestyle and being displaced from her residence
28 caused severe emotional trauma, which became heightened upon learning that Debtors filed

1 bankruptcy. *Id.* at ¶ 17-18. MCALVAIN lost all hope until her niece advised her that she
2 should seek legal assistance and that she may still be compensated for her loss. *Id.* at ¶ 19.

3 IV. DISCOVERY OF MCALVAIN'S CLAIMS

4 15. MCALVAIN's niece consulted with potential counsel for MCALVAIN, MOBO
5 Law, LLP (MOBO), in May 2022 for the purpose of determining if MCALVAIN had the ability
6 to file an untimely Proof of Claim. Shofner Decl. ¶ 7. MOBO informed MCALVAIN's niece
7 that there was a possibility that MCALVAIN could file a belated Proof of Claim. *Id.*

8 16. Shortly thereafter, MCALVAIN retained MOBO to file the instant Motion and
9 Proof of Claim on her behalf.¹ *Id.* at ¶ 8. At that time, MOBO advised MCALVAIN that she
10 needed to prepare a narrative of her experience and begin compiling data for the Proof of Claim.
11 *Id.*

12 17. Movant had considerable difficulty in recounting her experience and gathering
13 the necessary information to file the instant Motion and associated Proof of Claim due to the
14 sadness, distress, and anxiety of having to relive her traumatic experience. MCALVAIN Decl.
15 ¶ 19.

16 18. On June 30, 2022, MOBO filed Claim No. 108641 on MCALVAIN's behalf,
17 attached hereto as Exhibit "A". Accordingly, MCALVAIN now brings this Motion to deem her
18 late filed Proof of Claim timely.

19 V. LEGAL ARGUMENT

20 19. In a Chapter 11 case, the time to file a Proof of Claim may be extended under
21 certain circumstances. FRBP 3003(c)(3), 9006(b)(1). The bankruptcy court has "broad
22 equitable powers" in a Chapter 11 case with respect to the timing requirements for Proofs of
23 Claim. *Pioneer Investment Services v. Brunswick Associated Ltd. Partnership*, 507 U.S. 380,
24 389 (1993). Moreover, FRBP 9006(b)(1) allows "late filings caused by inadvertence, mistake,
25 or carelessness, not just those caused by intervening circumstances beyond a party's control."
26 *Id.* at 381. Even a creditor that did in fact receive notice may file a proof of claim
27 notwithstanding the expiration of a claims bar date in a Chapter 11 case upon a showing of

28 ¹ MOBO had internal difficulties in registering through the Court's ECF/Pacer system, which resulted in some delay
in filing the instant Motion. Shofner Decl. ¶ 9. Such delay was not in any way attributable to MCALVAIN. *Id.*

1 “excusable neglect.” *Id.* at 394-95 (“Had respondents here been prevented from complying with
2 the bar date by an act of God or some other circumstance beyond their control, the Bankruptcy
3 Court plainly would have been permitted to find ‘excusable neglect’ [under FRBP 9006].”)

4 20. Under the factors set forth by the United States Supreme Court in *Pioneer*, the
5 circumstances of this case clearly present excusable neglect. In following *Pioneer*, the Ninth
6 Circuit found that even when experienced counsel failed to calendar an appellate deadline with
7 no extraneous circumstances, a finding of excusable neglect was proper. *Pincay v. Andrews*,
8 389 F.3d 853, 859 (9th Cir. 2004).

9 21. In considering whether a creditor’s failure was the product of “excusable
10 neglect,” the Court should take account of the following: all relevant circumstances surrounding
11 the party’s omission, including: (1) the danger of prejudice to the debtor, (2) the length of the
12 delay and its potential impact on judicial proceedings, (3) the reason for the delayed, including
13 whether it was within the reasonable control of the movant, and (4) whether the movant acted in
14 good faith. *Id.* at 395; *See also ZILOG, Inc. v. Corning*, 450 F.3d 996, 1006 (9th Cir. 2006)
15 (noting *Pioneer*’s non-exhaustive list of relevant factors). Again, a late-filed Proof of Claim is
16 allowable where a creditor had actual notice of the bankruptcy but, due to some external reason,
17 failed to file a Proof of Claim or did not realize that she had to prior to the bar date. *Id.*
18 (applying the *Pioneer* factors). Here, consideration of all four (4) *Pioneer* factors weigh in
19 favor of MCALVAIN. Additionally, the case for excusable neglect is even more compelling
20 when the mistake was made by an unrepresented layperson. *Id.*

21 22. In particular, there is no danger of prejudice to Debtors in this case. Thus, the
22 first *Pioneer* factor weights in favor of MCALVAIN. Debtors’ estates are solvent, and all
23 creditors stand to be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-76 (Bankr.
24 S.D.N.Y. 2015) and *In re Sheehan Mem’l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014)
25 (where the Chapter 11 estate is solvent, “the proper remedy for a late filing is not the
26 expungement of a claim, but its allowance as a tardily filed claim only.”). Secondly,
27 immediately upon receiving all the necessary information, the Subject Proof of Claim was filed.
28 Thirdly, the delay in filing the Subject Proof of Claim is reasonable considering immediately

upon becoming aware of the damages that arose from the Camp Fire, MOBO was retained in this matter and a Proof of Claim was filed by MOBO on MCALVAIN's behalf. Lastly, any prospect of prejudice beyond solvency is unlikely given that: (a) all distributions have not yet been made; and (b) the value of Movant's claim relative to the value of Debtors' estates is low. *See, e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim in relation to the estate is a consideration in determining prejudice).

23. Movant acted in good faith. Her failure to file was not based on litigation tactics where a party deliberately misses a deadline to gain advantage. *Venice Baking Co. v. Sophast Sales & Mkg. LLC*, 2016 U.S. Dist LEXIS 141533. This factor alone weighs against finding excusable neglect even when the other *Pioneer* factors are present.

24. The likelihood of injustice is great if MCALVAIN's claim is not permitted. MCALVAIN is a Camp Fire victim whose primary avenue for compensation is through this bankruptcy. This is a factor that was properly considered by the Court in *Pincay, supra*, 389 F.3d at 859.

VI. CONCLUSION

25. Based upon the foregoing, MCALVAIN hereby requests that the Court grant this Motion and deem timely the Subject Proof of Claim.

WHEREFORE, Movant prays for an order:

1. Granting the Motion in its entirety;
2. Finding that the Subject Proof of Claim filed by the Movant is to be allowed as having been timely filed; and
3. Granting such other or further relief as the Court deems just and proper.

Dated: August 2, 2022

Respectfully submitted by,
MOBO LAW, LLP

/s/ Robin D. Shofner
Robin D. Shofner
Attorneys for Movant:
MARY MCALVAIN